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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/460,688	12/14/1999	KESTUTIS PATIEJUNAS	MCS-117-99	2824
27662	7590	08/02/2004	EXAMINER	
LYON & HARR, LLP 300 ESPLANADE DRIVE, SUITE 800 OXNARD, CA 93036			CRAIG, DWIN M	
			ART UNIT	PAPER NUMBER
			2123	

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/460,688

Applicant(s)

PATIEJUNAS, KESTUTIS

Examiner

Dwin M Craig

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 4-29-2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 17, 22-31 and 34-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 15, 32 & 33 is/are rejected.
- 7) ☒ Claim(s) 3-14, 16 and 18-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Claims 17, 22-31 and 34-38 have been cancelled. Claims 1-16, 18-21, 32 and 33 have been presented for reconsideration. **Claims 1, 2, 15, 32 and 33** are rejected. **Claims 3-14, 16 and 18-21** are objected to.

#### Response to Arguments

2. Applicants arguments filed on 4-29-2004 have been fully considered and the Examiners response is as follows:

**2.1 Regarding Applicant's canceling of claims 11-16, 18-21, 32 and 33:**

The previous 35 U.S.C. 103(a) rejections are moot in light of Applicant's canceling of claims 11-16, 18-21, 32 and 33.

After a review of the prior art and an updated search, new art rejections have been applied.

#### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Independent **Claim 1** and dependent **Claims 2, 15, 32 and 33** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Borella et al. U.S. Patent 6,442,141** in view of “**Efficient TCP over Networks with Wireless Links**” by Elan Amir, Hari Balakrishnan, Srinivasan Seshan and Randy H. Kratz, hereafter referred to as the *Amir et al.* reference and in further view of **Adelmann et al. U.S. Patent 4,703,477**.

3.1 As regards independent **Claim 1** the *Borella et al.* reference discloses simulating the connection characteristics of a network (**Col. 2 Lines 28-44**), and providing a driver to access the stream of packets (**Col. 4 Lines 19-21**), and calculating a send time (**Figure 2, Col. 5 Lines 36-48**), *the Examiner asserts that the timestamp is functionally equivalent to a send time* and deleting the send time when the packet is removed from the queue (**Col. 2 Lines 43-44**), *the Examiner asserts that setting the delay time to zero is functionally equivalent to deleting a send time from a network packet*, and simulating an additional connection characteristic of the network (**Col. 2 Lines 2-11**).

The *Borella et al.* reference does not expressly disclose; sequencing the network packets in a queue and altering the stream of packets and attaching the send time to the packet.

The *Amir et al.* reference discloses sequencing the network packets in a queue (**Figure 1 and Section 3.1 “Snoop Functions”**), and altering the stream of packets (**Figure 2**).

It would have been obvious, to one of ordinary skill in the art, at the time the invention was made to have created a queue of packets in a simulation because that is the only practical

method of tracking when a particular packet departs the computer system that is sending the packet out to be tested in use for determining the network latency.

The *Adelmann et al.* reference discloses inserting a time stamp into a network packet **(Figure 5)**.

It would have been obvious, to one of ordinary skill in the art, at the time the invention was made, to have inserted the time stamp into the test packet because then each packet being tested carries it's own start time stamp and a trace file is no longer required at the server to track the progress being made, a much simpler file containing the time delta based on the send time and arrival times of the packet being tested can be generated based on the time stamp read from each incoming test packet.

**3.2** As regards dependent **Claim 2** the *Borrella et al.* reference discloses transmission delay **(Figure 6, ITEM 122)**.

**3.3** As regards dependent **Claim 15** the *Borrella et al.* reference discloses "layers", **(Col. 4 Lines 19-21 & Col. 7 Lines 38-53)** it is noted by the Examiner that the reference cited discloses the use of kernel code and device drivers and application layer software **(Col. 7 Lines 38-53)** which constitutes different layers.

**3.4** As regards dependent **Claims 32 and 33** the *Borrella et al.* reference does not expressly disclose packet "headers".

The *Adelmann et al.* reference discloses custom packet headers **(Figure 5)**.

It would have been obvious, to one of ordinary skill in the art, at the time the invention was made to have inserted a header with a time stamp into the test packet because then each packet being tested carries it's own start time stamp and a trace file is no longer required at

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the server to track the progress being made, a much simpler file containing the time stamp delta based on the send time and arrival time can be generated based on the time stamp read from each incoming test packet's header.

**Allowable Subject Matter**

4. **Claims 3-14, 16 and 18-21** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

5. **Claims 1, 2, 15, 32 and 33** are rejected. **Claims 3-14, 16 and 18-21** are objected to. This action is **NON-FINAL**.

5.1 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwin M Craig whose telephone number is 703 305-7150. The examiner can normally be reached on 9:00 - 5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska can be reached on 703 305-9704. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-3900.

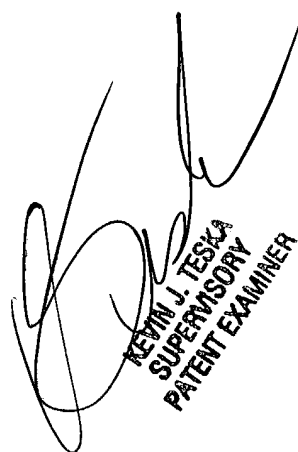
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DMC

July 20, 2004



KEVIN J. TESKA  
SUPERVISORY  
PATENT EXAMINER